

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

TOWN OF FRAMINGHAM REQUEST FOR)	
DETERMINATION OF RATES APPLICABLE TO)	
TRANSPORTATION AND TREATMENT OF SEWAGE)	D.T.E. 02-46
PURSUANT TO INTERMUNICIPAL AGREEMENT)	
)	

**TOWN OF FRAMINGHAM'S RESPONSE TO THE DEPARTMENT'S
SECOND SET OF INFORMATION REQUESTS**

The Town of Framingham ("Framingham") responds to the Department's Second Set of Information Requests as follows.

DTE F-2-1 Please produce all documents exchanged between Ashland and Framingham, prior to December 9, 1998, pertaining to “annual charges and rates of discharge” to be applied at any time after December 9, 1998 under the IMA.

DTE 02-46: RESPONSE TO DTE F-2-1:

Framingham has no responsive documents.

This response was provided by George P. King, Jr., Town Manager, and Peter Sellers, Director of Public Works.

DTE F-2-2 Please produce all documents exchanged between Ashland and Framingham, from December 9, 1998 to the present, pertaining to "annual charges and rates of discharge" under the IMA.

DTE 02-46: RESPONSE TO DTE F-2-2:

Some responsive documents already have been produced to the Department, including the draft agreement attached as an exhibit to Ashland's Answer to Framingham's Petition.

Additional responsive documents are attached hereto at Tab A.

This response was provided by George P. King, Jr., Town Manager, and Peter Sellers, Director of Public Works.

DTE F-2-3 Refer to the Joint Pre-Hearing Memorandum, at 11, ¶¶ 2-3 (Nov. 25, 2002). Please state all facts that demonstrate the period described, “for the fiscal years ending June 30, 1997 through June 30, 2001,” is relevant and reviewable. In addition, state all facts that demonstrate that costs “for the fiscal year 2002, which ended on June 30, 2002” are reviewable.

DTE 02-46: RESPONSE TO DTE F-2-3:

Framingham incorporates by reference the facts and arguments set forth in its Petition, and in its position statement in the Joint Pre-Hearing Memorandum, at pp. 1-3. Framingham further responds as follows.

1. The Special Act, St. 1946, c. 86, § 1, as amended by St. 1960, § 406, § 1, expressly confers on the Department’s predecessor power to adjudicate disputes between Framingham and Ashland as to the proper and just amounts to be paid by Ashland to Framingham for use of Framingham’s system.
2. The Special Act does not contain any language limiting the Department’s ability to provide full and complete relief to Framingham, and therefore the Department is empowered to employ all means reasonably necessary to carry out its mandate. See Town Taxi, Inc. v. Police Commissioner of Boston, 377 Mass. 576, 586 (1979).
3. Framingham cannot obtain full and complete relief unless the Department exercises the authority conferred upon it by the Special Act to award Framingham payments due for past years.
4. It will best serve the interests of the parties, and the public interest in economizing the state’s resources, to resolve all disputes between the parties in one forum.
5. The annual payments made to Framingham by Ashland in the fiscal year ended June 30, 1997 and thereafter grossly under-compensated Framingham for Ashland’s use of Framingham’s sewer system.
6. A municipality need not be held to a contract that has become unjust and inequitable due to the passage of time. Anglo Fabrics Co. v. Town of Webster, 15 Mass. L. Rptr. No. 10, 233 (Super. Ct. July 1, 2002).

This response was provided by counsel for Framingham.

DTE F-2-4 Please provide a table of all bills issued by Framingham and payments received under the IMA, from December 9, 1963 to the present, identifying (a) the relevant billing period, (b) the date that the bill was issued, (c) the amount invoiced, (d) the date paid, and (e) the amount paid. In addition, please itemize each bill and payment attributable to the components identified in the Joint Pre-Hearing Memorandum, at 8, ¶ 4. Where Framingham claims that payments to which it is entitled are past due, please attribute the arrearage to the appropriate components.

DTE 02-46: RESPONSE TO DTE F-2-4:

The requested table is attached hereto at Tab A. Please note that Framingham's records did not contain documentation of payments made by Ashland prior to 1998, with the exception of one payment made on June 18, 1997.

This response was provided by Abdul Alkhatib, Assistant Director of Public Works.

Respectfully submitted,
THE TOWN OF FRAMINGHAM,
By its attorneys,

Christopher J. Petrini
Erin K. Higgins
Conn Kavanaugh Rosenthal Peisch
& Ford, LLP
Ten Post Office Square
Boston MA 02019
(617) 482-8200
(617) 482-6444 (fax)

DATED: _____

165245.1